IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5659 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RANCHHODBHAI NAROTTAMBHAI PATEL - Petitioner(s)
Versus
ASSISTANT COLLECTOR & 5 - Respondent(s)

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Appearance :
MR CJ VIN for Petitioner(s) : 1,
None for Respondent(s) : 6.
MR DIPEN DESAI, ASSTT. GOVERNMENT PLEADER for Respondent(s) :1-4

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 04/05/2007

ORAL JUDGMENT

1. Shri C.J. Vin, learned counsel for the petitioner; Shri Dipen Desai, learned AGP for the respondents no. 1 to 4; none for the

respondents no. 5 and 6 though served.

2. The entry made in favour of the petitioner had been cancelled on two grounds, namely, that he is not an agriculturist and secondly that he does not hold any agricultural land within the periphery of 8 kilometers of the land purchased by him.

3. It is not in dispute before me that during pendency of this writ application, Section 2[6] of the Bombay Tenancy & Agricultural Lands Act, defining “to cultivate personally” has been changed with retrospective effect and the law says that it would always be deemed that the amendment 'to have the land within periphery of 8 kilometers' has never come into action or force.

4. In the present case, the ground of non-availability of land within 8 kilometers now would not be available to the State Government.

5. Shri Dipen Desai, learned AGP, however, submits that the question still would be that whether the petitioner possesses any agricultural land elsewhere. Shri Vin, learned counsel for the

petitioner, referring to the order passed by the Assistant Collector submits that it makes a reference to the petitioner's holding bearing Block No. 306 situate at Navi Pardi, therefore, the petitioner is not required to lead any further evidence.

6. In the opinion of this Court, even while referring to the revenue entry relating to the land bearing Block No. 306, the learned Assistant Collector has observed that the petitioner had not led any evidence that under what authority of law he is holding such land and how he has come in possession of the said land. In fact, there is no specific finding that the petitioner is in legal possession of the agricultural land bearing Block No. 306 situate at Navi Pardi and if this is the situation, the authorities were justified in remanding the matter to the Assistant Collector for making an inquiry into the fact that whether the petitioner holds some agricultural land elsewhere.

7. The order of remand made by the authorities is

confirmed, however, the petitioner would not be required to prove that he holds the agricultural land within the periphery of 8 kilometers. The parties shall appear before the Assistant Collector on 8th June, 2007 with a copy of this order enabling the authority to know that what he is required to do. Within a period of four months from the date of appearance of the parties, the Assistant Collector, after giving due opportunity of leading evidence and hearing to the parties, shall dispose of the matter by a speaking order in accordance with law. The petition is disposed of. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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